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Any Complaints?
A Review of the Framework of Self Regulation
In the Australian Advertising Industry

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Introduction and Purpose

For a nation with a comparatively small population and modest GNP, Australia has fostered a vital and well-organised advertising industry. Its proximity to the Asia-Pacific region and its closeness to the UK and USA culturally and economically has both shaped the nature and encouraged the growth of the Australian advertising industry. As a result, its infrastructure resembles that of many developed nations with advertising agencies, advertisers, media, supporting consultants, production houses and government and self-regulatory bodies.

It is for these reasons, as well as the recent changes in the advertising self-regulation system, that Australia presents an interesting framework in which to review the foundation concepts of self-regulation in advertising.

Of special note is the fact that the previous system of self-regulation in Australia had been used as a role model by many countries in the Asia Pacific region including New Zealand, Singapore and India, as well as others such as the UK, Canada, and South Africa. This paper examines the reasons for changing this previously successful system of self-regulation. It shows how the abolition of Australia's media accreditation system has impacted upon the self-regulation process. It demonstrates the role of a vigilant consumer association and the ineffectual position of the advertising agency industry group. Finally, it highlights the danger of advertiser non-compliance in the self-regulatory process.

To do this, the paper addresses three research issues. What are the differences between the new and old advertising code, the structure of the boards and enforcement mechanisms? How does the performance of the new code compare with its predecessor? Has the self-regulatory process been weakened by the removal of an enforcement mechanism?

These research issues raise more fundamental questions such as whether advertisers, the group with most to gain, should be in control of the process of self-regulation. It questions whether there has been a weakening in the standard of advertising and underlines the risk of losing the privilege of self-regulation. In addition, this paper also serves a vital role in monitoring the change, its challenges and its consequences. While the case is specific to Australia and its implications important for the Asia-Pacific region, the self-regulatory issues that emerge are universal.

The Australian Case

Advertising content in Australia is regulated through the Trade Practices Act and the Australian Broadcasting Authority (ABA) Act. In addition, specialist industries have their own codes of ethics which are managed by individual industry groups, including the Therapeutic Goods Code (TGC), the Alcoholic Beverages Advertising Code and the Weight Management Industry Code. All other advertising is self-regulated by the advertising industry through the Advertising Code and the administrative Boards.

For 22 years, the Media Council of Australia (MCA) Advertising Code set the guidelines for self regulation in Australia. This code was monitored, evaluated and enforced by the Australian Standards Council (ASC). On September 27 1996, the MCA announced it would disband the ASC, effective December 31 1996.

This announcement was precipitated by the decision to revoke the authorisation of the agency accreditation system in July 26 1996. The MCA and the advertising agency industry body, the Australian Federation of Advertising (AFA) presented a view to the tribunal that the media accreditation system and the advertising codes were linked and that a loss of accreditation would substantially weaken the codes and their enforcement. The tribunal, however, did not accept this argument, pointing out numerous instances where countries without media accreditation still had effective self regulatory frameworks. However, the tribunal did insist upon new authorisation of the advertising codes by the Australian Competition and Consumer Commission (ACCC).

On August 19 1996, the ACCC served notice of a review of authorisation of advertising codes to the MCA, AFA, Australian Association of National Advertisers (AANA) and ASC. A month later, the MCA disbanded the advertising codes and structures.

In a final statement, the Executive Director of the ASC, Colin Harcourt (1997, p.15) said, 'The system, including the ASC, whilst not without its critics, was regarded as a world model of self-regulation. In fact, the systems in place in New Zealand, Singapore, India, South Africa and even the UK and Canada, include many components adapted from Australia.'

Why then was it necessary to abandon a successful code of advertising ethics and the structure of the ASC? From the perspective of the MCA, a number of important issues emerged. Firstly, was the MCA legally entitled to maintain the system and structure of advertising regulation without authorisation? The ASC contends so, although authorisation for the implementation of the code of ethics was granted to the MCA by the TPT (now ACCC) in 1978 and reviewed in 1996. Secondly, was there any interest to support the code when there was no longer the commercial benefit of accreditation for its members? Thirdly, would the MCA have the administrative responsibility to collect advertiser levies to fund the code? And lastly, without the support of the advertiser body, the AANA, would the codes be successful anyway?

The AANA had shifted its position from strong supporter of the Advertising Codes to fierce opponent. It sought to weaken the codes, change the charter of the ASC and constantly opposed its funding. It seemed to many within the advertising industry that

the AANA was driving the agenda. It had fought the media accreditation system and now sought to influence the code of ethics for the benefit of its members.

Architect of the new code, Robert Koltai contends that advertisers - not agencies - should control the content of their advertisements. He said, 'I think it's time advertisers stepped up to the plate and managed this part of their affairs. After all, it's their advertisements.' (B&T, October 4 1996)

The AANA was aided in their quest for control of the self-regulation process by the vocal and consistent criticism of the existing system by Australia's consumer association. ACCC Chair, Professor Fels (1996, p.1) said, 'The ACCC believes that since authorisation was granted circumstances appear to have changed in regard to:

- . the responsiveness of the codes to changes in community needs;
- . mechanisms for enforcement of the codes. These mechanisms are not considered adequate to ensure compliance with the codes causing a diminution in confidence in the integrity of the 'codes system';
- . diminished confidence in the integrity of the codes system which has lead some parties to attempt to circumvent/amend the codes;
- . public representation on the Advertising Standards Council which has eroded the commitment of the founding organisations and thus support for the advertising codes.'

He continued, 'These changes appear to have increased the anti-competitive effects associated with the operation of the code system and diminished the benefit to the public that it offers'.

Other criticism included a lack of responsiveness to changes in community needs and suggestions that public representation on the council reflect the age, gender and attitudes of the community at large. Others complained that the ASC had become too hierarchial, awarding the chairman too much influence over final outcomes. It was also reported that the changed funding arrangements eroded the support of the funding organisations and weakened the strength of the code. A better process for appeals and a better system for dealing with advertiser-to-advertiser complaints was proposed. Finally, it was suggested that the integrity of the codes was challenged by the lack of adequate enforcement mechanisms.

Many of these criticisms involved structure or process. Reportedly, industry bodies were close to agreement regarding necessary changes to the ASC in 1995 when negotiations halted with the media accreditation court case. B&T, on October 4 1996, noted, 'Rather than making adjustments to a present system, the industry must now build something new from a clean slate'.

Research Issues

This paper explores the fundamental concepts of self regulation and their implications for the Asia Pacific Region, by using the Australian case as a framework. It questions whether the new system of self regulation, which has been driven by the advertisers, inherently benefits this group. To do this, it compares the content of the new Advertising Code and the structure of the new Boards with any changes in the

outcome of the review process. Specifically, this paper addresses the three important research issues of content/structure, performance and enforcement.

1. What are the differences between the new code of ethics, its predecessor and the international standard? In particular, how does it compare in terms of the content of the code, the structure of the boards and the enforcement mechanisms? Does the new code counter the criticisms of the old code?
2. Has the performance of the new code differed in any substantial way from its predecessor in terms of the number of complaints upheld, the complaint by medium, by product type and by code?
3. What has been the effect of a self-regulatory process with no enforcement mechanism?

Methodology

To address the first research issue, the authors undertook a content analysis of the old and new code of ethics. Using the International Chamber of Commerce (ICC) International Code of Advertising Practice (1997 edition) as a benchmark, the articles of each code were examined, compared and tabulated to form a grid highlighting points of similarity and difference. The ICC code was chosen as a benchmark due to the comprehensive nature of its provisions and respected international profile. The two researchers coded the information separately and then compared their results in order to reduce bias.

In exploring the outcomes of the new and old codes of ethics as identified in the second and third research issue, the researchers borrowed the categories in the final ASC report and plotted the determinants of the new code in the appropriate categories. While some of the categories had changed and some new ones emerged, the table presents an indication of trends. Again coding was undertaken independently and results compared and presented in the findings.

Issue 1: A Comparison of the Code of Ethics

In order to compare the new and old codes of ethics, this research examines the content of the advertising codes, the structure of the boards, the enforcement of the codes and how the new code has countered the criticisms of the old.

Content of the Advertising Codes

The ICC code is more comprehensive than either the previous or current Australian code with 23 individual components. Particularly, it contends that:

- . advertisements should not abuse the trust of consumers or exploit their lack of experience or knowledge
- . comparisons should be fair
- . people should not be referred to or portrayed without their permission
- . advertising should not exploit the goodwill of a firm such as its name or logo

- . advertising should not imitate the advertising of others in terms of layout, text, slogan, music
- . advertising should not introduce or support unsolicited products
- . the responsibility for the advertisement lies with the advertiser, agency, publisher and media owner
- . while redress for the breach is desirable, it does not excuse the breach in the first place
- . advertisements deemed unsuitable by self-regulatory bodies should not be published
- . the code should be implemented by a specially established body

Additionally, it is much more definitive in its code of practice relating to children.

The MCA code, used in Australia prior to 1997 and as a model for other self-regulatory processes in the Asia-Pacific region, incorporates more than half of the ICC code, covering 14 of the 23 provisions. The major issues of the code relating to decency, discrimination, misleading advertising, denigration of competitors, testimonials, guarantees, health and safety, substantiation of claims, lawful behaviour and honesty in advertising is reflected in the MCA code. It also contains many of the points relating to children.

The new AANA code incorporates less than one third of the ICC code with seven out of the 23 points addressed. It includes areas of discrimination, misleading advertising, health and safety, denigration of competitors and lawful behaviour. In addition, it specifies particular advertising practice in areas such as the environment, Australian origin and content of products, violence, sex, sexuality and nudity and offensive language.

This code appears to address the categories of complaints of the ASC, including sexism, taste and decency, discrimination, safety and children. Many of these specifics are contained within the bigger issues of social responsibility, decency and honesty in the other codes.

Comparing the old and new code, the major difference is that the old code is more in keeping with the spirit and content of the ICC code, while the AANA code addresses the more specific issues on which the board has to arbitrate. It covers some of the broader issues such as lawful behaviour, misleading and deceptive behaviour, discrimination, denigration of competitors, as well as specific areas of sex, violence, environment, Australian content, offensive language, health and safety and children.

Much of the criticism of the new code has mentioned the deletion of point 5 in the old code which states 'and shall not demean the dignity of men, women and children'. Another point of contention is number 2.4 in the new code, which has omitted 'physical, mental or moral harm' from its treatment of children. In addition, there is no reference in the new code to the authority of parents and advertisements should not directly urge children to put pressure on their parents to buy them the product.

In addition, the new code does not refer to prevailing community standards and offensive behaviour, the exploitation of the superstitious or playing on fear. It does not mention the substantiation of data or claims which should be neither misleading nor

irrelevant. It makes no mention of testimonials or guarantees. To explore each provision, Table 1 presents a comparison of the three codes.

Table 1: Comparison of the Advertising Codes of Ethics

| COMPARISON OF ADVERTISING CODES | | | |
|--|-----|---------|---------|
| | ICC | MCA | AANA |
| 1. All advertising should be legal honest and truthful | 1 | 7 | |
| 2. Advertising should not contain statements or visuals which offend standards of decency | 2 | 6 | 2.5 |
| 3. Advertising should not abuse the trust of consumers or exploit their lack of experience or knowledge | 3 | | |
| 4. Advertising should not condone discrimination, play on fear, incite violence or play on superstition | 4 | 5 10 | 2.1 2.2 |
| 5. Advertising should not be misleading in product, price, service, guarantee, copyright, awards or research | 5 | 7 13 | 1.2 |
| 6. Comparisons must be fair | 6 | 11 | |
| 7. Advertising should not denigrate any firm, activity, product or profession by public ridicule | 7 | 11 | 1.3 |
| 8. Testimonials should be genuine | 8 | 14 | |
| 9. Advertising should not portray or refer to people unless permitted | 9 | | |
| 10. Advertising should not exploit the goodwill of firm - name, logo | 10 | | |
| 11. Advertising should not imitate others layout, text, slogan, music | 11 | | |
| 12. Advertisements should be clearly identified as such | 12 | 8 | |
| 13. Advertisements should not contain dangerous practices or show disregard for safety/health | 13 | 4 | 2.6 |
| 14. Advertising should not exploit the inexperience of young people, understate the degree of skill for age level, true size, performance, extra items required for use, how to get series, or stress low price. It should not harm or threaten children, no suggestion of social or psychological value and not undermine authority of parents. | 14 | 12 | 2.4 |
| 15. Advertising should not make reference to guarantee unless it provides additional rights to the law | 15 | 15 | |
| 16. Advertising should not support or introduce unsolicited products | 16 | | |
| 17. Advertising should not approve or encourage actions which contravene law or accepted behaviour | 17 | 2 3 | 1.1 |
| 18. The responsibility for advertisement lies with the advertiser, agency, publisher and media owner | 18 | | |
| 19. Rules apply to advertising in its entirety | 19 | 1 | |
| 20. Redress for the breach is desirable, but does not excuse the breach | 20 | | |

| | | | |
|--|----|---------|--|
| 21. All descriptions, claims, facts, illustrations should be sustainable | 21 | 9 13 | |
| 22. Advertisements deemed unacceptable by self-regulatory body should not be published | 22 | | |
| 23. The code should be implement by bodies set up for this purpose and ICC's International Council on Marketing Practice | 23 | | |

In summary, while both the old and the new code fall short of the international benchmark, the old code reflects its spirit and the majority of its content. The new code is narrower and focuses on many specific issues on which the board must make determinations.

Structure of the Boards

The structure of the Advertising Standards Council was headed by a chairperson, who appointed a Deputy Chair, seven members and four alternative members. These people were not representative of any organisation and served as individuals, bringing to the ASC a wide range of experience and interests. These members were extremely well credentialed, with four having Masters degrees, ten with bachelor degrees and five with an M.B.E., O.B.E. or O.A.

In addition to these members, a further six were drawn from industry associations, such as the AFA, AANA (2 members), Radio, Print and Television organisations. Their votes were counted as personal judgements, rather than representing the agendas of their organisations.

The ASC has been replaced by two boards. The first section of the Advertiser Code of Ethics is administered by the Advertising Claims Board. This handles competitor complaints about truth, accuracy and questions of law on a user-pays basis. The Advertising Standards Board applies section 2 of the Advertiser Code of Ethics, dealing with complaints involving issues of taste and decency and health and safety.

In terms of their membership, publicly available information indicates two members having post-graduate qualifications, three (and one currently underway) holding bachelor degrees and a further four with an O.A or M.O.A. The emphasis is less on their credentials and more on their representativeness of a cross section of the community to the extent that two of the members included a high school student and a university student, both of whom have now graduated.

The initial aim was to make the board completely independent from the advertising industry. However, seven of the 14 members rely upon the media for their living and one is an ex-advertising man. Recent criticism has focused on the media profiles of the members and the possibility of conflicting egos. Seven out of the 15 members are male, a ratio which evens out an initial imbalance where only 4 of the 14 inaugural members were male. It does appear that the current members have more exposure to the public than the previous board, but do they represent the opinions, ideals and understandings of the general masses who are the primary complainants of advertising. Further, there

would appear to be a socio-economic divide between the board and the people it represents. The boards are industry funded and administered by the AANA.

How the new code has countered the criticisms of the old

Another way to compare the codes is to examine how the new code has addressed the criticisms leveled at its predecessor. Table 2 summarises this.

Table 2: How the new code of ethics has addressed past criticism

| Criticisms of the Previous Code and Board | How the New Code and Boards have addressed the criticisms |
|--|---|
| More public representation of community in terms of age, gender and attitude | More high-profiled board - media, socio-economic and initial gender bias |
| Structure too hierarchial/Chairman too much power | Less hierarchial/No appointed Chair |
| Changed funding arrangements following abolition of media accreditation system | Voluntarily funded by AFA agencies |
| Better appeals process | More flexible appeals process |
| Better system for advertiser-to-advertiser complaints | Advertising Claims Board handles competitor complaints on a user-pays basis |
| Lack of adequate enforcement mechanism | No enforcement mechanism |

In summary, although the structure of the ASB is not hierarchial and does not have an appointed Chair, there is still a representational bias. The new code is funded by voluntary agency contributions and must rely upon the compliance of advertisers to enforce decisions. However, an important outcome is an improved system for dealing with advertiser-to-advertiser complaints.

Issue 2: Performance of the Two Codes

The number of complaints received by the ASC has increased from 691 in 1992, to 1300 in 1993 to 1066 in 1994 to 1095 in 1995 and to 1203 in its final year in 1996. The data for the final year which was 1135 complaints processed from January to October 1996 is compared with the data from the first three years of operation of the Australian Standards Board, from February to December 1998.

This data comprises on average 322 reviews per year of the total number of complaints received in the first three years of the operation of the Advertising Standards Board. The ASB only addresses Section 2 of the Code of Ethics and does not deal with competitor complaints. As this is a user pays service, this data is not available for inclusion.

Table 3 looks at the outcomes of the complaints. The percentage of complaints upheld in 1996 was 12%, compared with less than 2% under the new system in 1998. 84% of complaints were dismissed in 1996, compared with 98% in 1998. In 1999 and 2000,

the percentage of complaints upheld has increased slightly to 5% and 6% respectively, however this still only represents half the number of complaints upheld under the ASC.

Table 3: Percentage of Outcomes of the complaints

| % | 1996 | 1998 | 1999 | 2000 |
|------------------|-------------|-------------|-------------|-------------|
| Upheld | 12 | 2 | 5 | 6 |
| Dismissed | 84 | 98 | 75 | 77 |
| Other | 4 | 0 | 20 | 17 |
| Total | 100% | 100% | 100% | 100% |

Predictably, television advertising scored the largest number of complaints, and continues to do so with an increased majority. 1998 saw a significant drop in the number of complaints about outdoor advertising although this has increased again to 19% in 2000. Print media, which had the second highest percentage of complaints in 1996, has dropped substantially to 7% in 2000. The complaint by medium is presented in Table 4.

Table 4: Percentage of Complaint by Medium

| | 1996 | 1998 | 1999 | 2000 |
|-------------------|-------------|-------------|-------------|-------------|
| Television | 50 | 75 | 72 | 72 |
| Print | 21 | 13 | 12 | 7 |
| Radio | 3 | 6 | 4 | 1 |
| Cinema | 2 | 2 | 1 | 0 |
| Outdoor | 23 | 5 | 12 | 19 |
| Total | 100% | 100% | 100% | 100% |

The complaints by product type indicate no significant shifts from 1996 to 2000.

Table 5: Percentage of Complaint by Product Type

| | 1996 | 1998 | 1999 | 2000 |
|-------------------------------------|-------------|-------------|-------------|-------------|
| Advocacy/Community Awareness | 5 | 0 | 6 | 8 |
| Alcohol | 3 | 2 | 10 | 3 |
| Cigarettes | 0 | 0 | 0 | 0 |
| Clothing | 9 | 6 | 10 | 5 |
| Pharmaceutical | 1 | 0 | 0 | 0 |
| Employment | 0 | 0 | 0 | 2 |
| Fin/Investment | 2 | 3 | 1 | 3 |
| Insurance | 1 | 2 | 1 | 1 |
| Food | 29 | 21 | 11 | 13 |
| Furniture | 0 | 0 | 0 | 0 |
| Household goods/services | 9 | 6 | 6 | 4 |
| Office goods/services | 1 | 0 | 4 | 0 |
| Real Estate | 1 | 1 | 0 | 1 |
| Hair Treatment | 0 | 0 | 0 | 0 |

| | | | | |
|-------------------------|------|------|------|------|
| Slimming | 2 | 1 | 0 | 0 |
| Hware/Machinery | 0 | 1 | 0 | 1 |
| Vehicles/Access | 6 | 8 | 10 | 7 |
| Travel | 4 | 2 | 9 | 2 |
| Entertainment | 5 | 6 | 4 | 6 |
| Toys & Games | 1 | 1 | 1 | 1 |
| Education | 0 | 4 | 1 | 1 |
| Jewellery/Gifts | 0 | 0 | 0 | 0 |
| Prof. Services | 1 | 1 | 2 | 4 |
| Media | 6 | 3 | 2 | 5 |
| Other | 14 | 4 | 0 | 3 |
| Retail | | 6 | 9 | 14 |
| Leisure/Sport | | 6 | 2 | 2 |
| Restaurants | | 2 | 1 | 3 |
| Phone Sex | | 1 | 0 | 0 |
| Info Tech | | 1 | 1 | 1 |
| Health | | 2 | 4 | 1 |
| Telecoms | | 4 | 3 | 5 |
| Toiletries | | 6 | 2 | 4 |
| Total | 100% | 100% | 100% | 100% |

The relative increases in the category codes are probably a reflection of the new codes available for categorisation, rather than any shift in the type of complaint. For example, a complaint involving offensive language was possibly recorded in the taste and decency code, rather than in its own code provided by the new system. Taste and decency dropped from 50% in 1996 to 0% in 2000, with violence and language recording 10% and 7% respectively in the latter year.

In other cases where categories previously existed, such in the case of sexism, a dramatic increase is recorded in the number of complaints, from 3% in 1996 to 27% in 2000. Likewise, health and safety recorded an increase from 4% in 1996 to 24% in 2000, and discrimination from 5% in 1996 to 27% in 2000.

Discrimination is the major code of complaint overall, followed by taste and decency, sexism, and health and safety. These are presented in Table 6.

Table 6: Percentage of Complaint by Code or Category

| | 1996 | 1998 | 1999 | 2000 |
|-------------------|-------------|-------------|-------------|-------------|
| CB-Ethics | 34 | | | |
| CB-Alcohol | 2 | | | |

| | | | | |
|-----------------------|----|----|----|----|
| CB-Cigarette | 0 | | | |
| CB-Therapeutic | 1 | | | |
| CB-Slimming | 1 | | | |
| Sexism | 3 | 23 | 25 | 27 |
| Taste/Decency | 50 | 2 | 0 | 0 |
| Discrimination | 5 | 31 | 52 | 27 |
| Health/Safety | 4 | 16 | 13 | 24 |
| Breach Law | 0 | 0 | 0 | 0 |
| Children | 0 | 5 | 5 | 2 |
| Violence | 0 | 9 | 14 | 10 |
| Language | 0 | 5 | 9 | 7 |
| Mail Order | 0 | 0 | 0 | 0 |
| Other | 0 | 9 | 17 | 4 |

Issue 3: Enforcement Powers of the Self-Regulatory Systems

Under the previous code of ethics, the decision of the board was enforced by the action of the MCA. Authorised by the Trade Practices Tribunal, the MCA could direct its members to immediately withdraw any advertising which contravened the code of ethics.

In comparison, the new code has no enforcement mechanism. Upon finding an unfavourable determination, the ASB prepares a case report to the advertiser who has five business days to respond. The advertiser must advise the board of their intention to modify or discontinue the advertising. If the advertiser decides to disregard the ASB recommendations, there is no other recourse.

To date, most advertisers have complied with the ruling of the ASB. Some have taken as long as 11 days after the unfavourable ruling to withdraw their advertising. Only one advertiser, Windsor Smith, has refused to comply with the ruling entirely.

On their website (www.afa.org.au), the AFA acknowledge that , 'The authority of the two boards rests on the willingness of advertisers to adhere voluntarily to ethical standards.'

Discussion

Was there a need to change a successful model of self regulation?

While there were criticisms of the old code and ASC, there was also evidence of its success. On average, the ASC handled between 1,000 and 1,300 individual complaints per year with an average turnaround time of 20.9 days. Its rulings were rarely controversial and followed the ICC code in spirit and content. In addition, the old code was used as a model throughout the world.

Chairman of the ASC, Paul Toose (1997, p.8) also made the point, 'To this day, no real evidence has ever been provided by anybody including the TPC (ACCC) to show that the accreditation system and the Advertising Codes were truly anti-competitive in

their effect, in alone **causing or likely to cause a substantial lessening of competition** as contemplated by S 45 of the Trade Practices Act’.

However, the critical factor in the success of the old codes and board was the support of its stakeholder bodies. The advertisers’ association while initially a strong supporter became a fierce opponent. The other two key stakeholders, the media and the advertising agencies believed that the codes and the media accreditation system were linked. Once the media accreditation system was abolished, their support for the codes and the ASC wavered. This was compounded by the constant criticism of the consumer association.

While the codes and the board may have been fundamentally solid, they were not supported.

Should the codes be shared by the Media, Advertisers and Agencies?

In order to gain support for the codes, the major stakeholders need to have some equity in them. Former chairman of ASC, Paul Toose suggested joint ownership of the codes amongst the three stakeholders - the media, advertisers and agencies. He felt that this could encourage ownership and support for the code and its administrative boards, as well as removing the possibility of vested interest.

For example, it could be construed that the AANA represents the interests of the advertisers and has a vested interest in the administration of the codes. Likewise, the media (MCA) appeared to lose interest in their administrative responsibility when there was no longer the commercial benefit for its members.

However, it is questionable whether the level of cooperation required between these three very different parties to jointly administer the codes would be ever achievable. AANA’s Robert Koltai view hardly represents an inclusive approach. He said, ‘I don’t know as of today where the AFA is in relation to this. I don’t know how relevant their views are anyway. There is an increasing need to resolve these things between advertisers and the media.’ (B&T, October 4 1996). This is a particularly interesting viewpoint when the codes are funded by the advertising industry.

Has there been a weakening in the standard of advertising?

To consider this question, the discussion focuses on two points - the weakening of the code in terms of the provisions it covers and the rulings it has made.

While the old code covered 14 of the 23 ICC code provisions, the new code only covers seven. The new code is not as comprehensive, yet includes specific provisions for environmental concerns, Australian origin products, sex, sexuality and nudity and obscene language. It could be argued that these categories are major areas of complaint, deserving special attention in the new codes. However, Table 6, Compliant by Code, does not bear this out.

Comparing the determinations of the new board, the number of complaints upheld has decreased significantly from 12% in 1996 to a low of 2% in 1998. Is it the right image for the advertising industry to be as ‘open-minded’ or should it err on the side of conservatism to prove that it has the consumer’s best interests at heart? Surely less

than 2% of complaints upheld is an exceptionally low figure. Should commercial interests and the increasing difficulty of getting the viewer's attention be given more credence than offending consumers outside of the target market?

Should we be concerned about Children's Advertising?

In the previous code, point 12, relating the advertising to children, covered two main aspects. Firstly, the advertisement should not contain anything which would result in physical, mental or moral harm. Secondly, the advertisements should not encourage children to harass their parents to buy the product.

In contrast, the new abridged version states that advertising to children 'shall not contain anything which is likely to cause alarm or distress'. It is not as strong or comprehensive, removing the element of physical, mental or moral harm and the incitement to parental pressure. It has not as yet been tested.

Can Self-Regulation work without an effective enforcement mechanism?

The best answer to this question is a consideration of the Windsor Smith case. The advertiser, when encouraged by the ASB to remove the offending advertisement, refused to do so. They responded, "Windsor Smith have decided to stand by their belief that the billboard campaign that started from March 1 is not inappropriate and to leave the billboards up. Although we hold a high respect for the Board, we feel that in this case that the Board has made a bad judgement and used Windsor Smith as an example as a result of complaints we feel is from a minority." (ASB Casebook 2000).

The ASB could do nothing further. However, the media decided to uphold the ruling of the ASB and removed the offending billboards. It is significant to note that when the new system failed, the enforcement mechanism of the previous system was enacted.

Dann and Dann (2001,3) argue that the media's 'actions re-established the balance of self-regulation without resorting to heavy-handed prosecutions, new legislation or any other form of government intervention', and therefore the Australian advertising industry is successful in being self-regulatory. This viewpoint still does not, however, adequately address the effectiveness of the ASB as a self-regulatory body in itself.

Conclusion and further research

The new advertising code of ethics covers fewer provisions, has significantly less complaints upheld and has no real power of enforcement. The new board lacks the depth of skill of its predecessor and has both a media and socio-economic bias. It presents, however, a better system for dealing with advertiser-to-advertiser complaints.

Future research should continue to monitor the new code and the new boards. A study of the role of the ACCC would be interesting to confirm its real role and powers. Also, what do consumers think of the new self-regulation system? Further research could confirm whether the findings presented by the Board are actually representative of the views of the general public or reflective of the media profile of the Board. In addition, it would appear that the advertising agencies have been a silent party in the review of

the self regulation process. What is their position? Do they, the ACCC, the Australian public, the government or other stakeholders have any complaints?

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